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POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XIX

VEHICLE SEARCH...

PROBABLE CAUSE

(US V. GONZALES, 513 F2d 928)

OFFICIAL POLICE COMMUNICATION

AS PROBABLE CAUSE TO SEARCH

(US V. LAVALLEE, 522 F2d 211)

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FLEMING'S NOTEBOOK...Chapter 119

Foreign-State Arrest Warrants

Fugitive Warrants

Out-of-State Bad Check Warrants

STATE DOCUMENTS

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LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

VEHICLE SEARCH - PROBABLE CAUSE
(US V. GONZALES 513 F2d 928)

OFFICIAL POLICE COMMUNICATION
AS BASIS FOR STOP AND SEARCH
(LAVALLEE V. US 522 F2d 211)

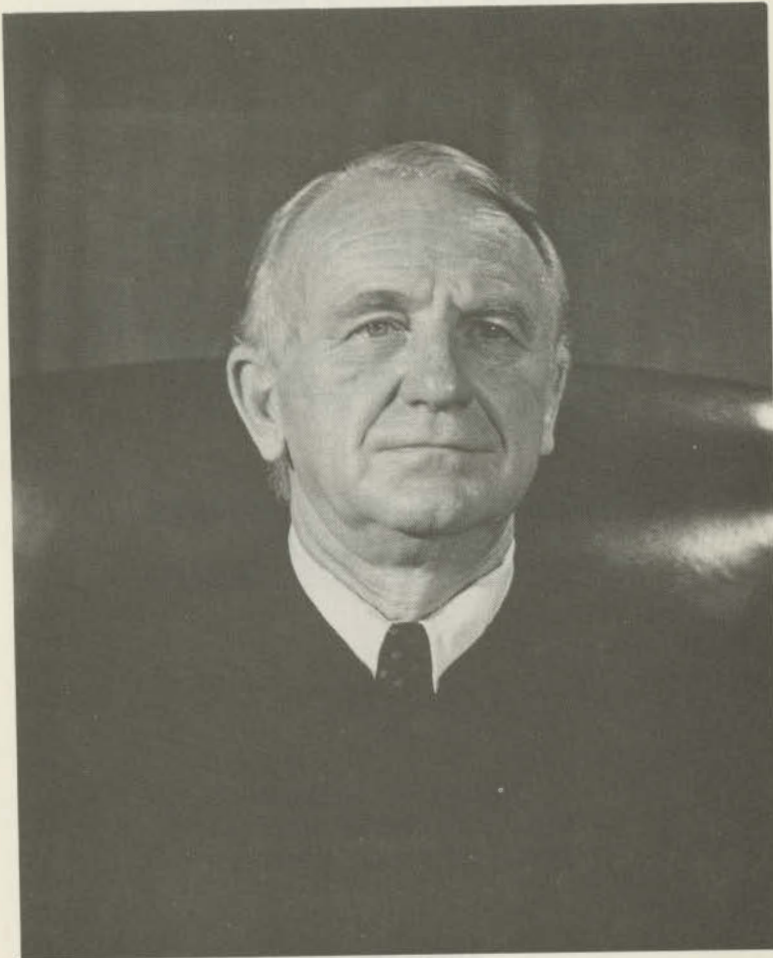
FOREIGN-STATE ARREST WARRANTS
FUGITIVE WARRANTS
OUT-OF-STATE BAD CHECK WARRANTS

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Hon. George F. Coleman
Circuit Judge
State of South Carolina

"Although police officers are fully justified in relying upon a police radio or teletype communication to stop and investigate a felony-suspect vehicle, and search it in proper cases, the prosecution must be prepared at trial to show that there was lawful probable cause to issue the communication in the first place... otherwise, evidence discovered from the search will be suppressed."

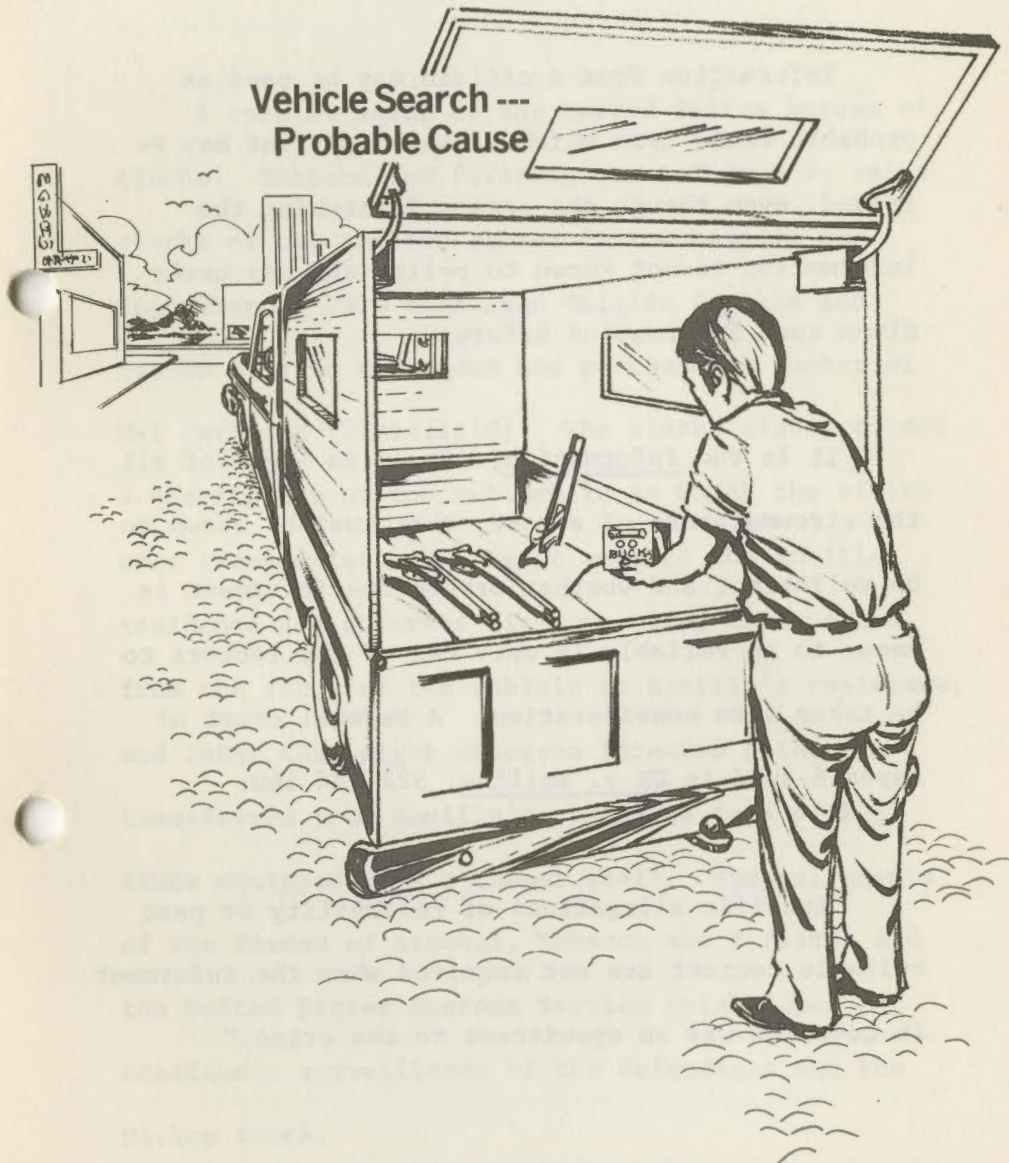
George F. Coleman

Circuit Judge

State of South Carolina

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VEHICLE SEARCH...PROBABLE CAUSE

Information from a citizen may be used as probable cause upon which a search warrant may be issued, even though the person furnishing the information is not known to police and has never given such information before.

It is the information, viewed in light of all the circumstances of a case, that must be shown to be reliable...and whether or not the informant is known to be reliable is only one of the factors to be taken into consideration. A Federal Court of Appeals said in US v. Rollins, 522 F2d 160:

"Specific allegations of reliability or past reliable contact are not required when the informant in question was an eyewitness to the crime."

US V. GONZALES
513 F2d 928

A special agent of the United States Bureau of Alcohol, Tobacco and Firearms was informed by sales clerks of two surplus stores in Los Angeles on September 4, 1973 that Juan Emiglio Bonilla and Benito Alberto Hernandez had purchased a number of M-1 carbines (Plainfield). The clerks also provided a description of the automobile in which the rifles were transported. The agent went to the Bonilla residence and observed firearms being transported from the trunk of the vehicle to Bonilla's residence, and later that night observed firearms being transferred from Bonilla's residence to a pickup truck equipped with a camper shell. Special agents of the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service established continuous surveillance of the defendants and the pickup truck.

The agents observed a larger camper shell being built and placed on the pickup truck. Two other defendants (not parties to this appeal) were observed loading articles into the camper and discarding empty rifle boxes. The agents also observed the camper being loaded with a quantity of ammunition and M-1 carbine magazines, and thereafter paneling being installed in the interior of the camper. A check with the Munitions Control Section, United States Department of State, revealed to the agents that no firearms export permit had been issued to the appellant, Bonilla, Hernandez or to the other two defendants.

On November 6, 1973 agents observed the appellant drive the camper from Redondo Beach, California to the international border at San Ysidro, California. The camper was stopped approximately fifty feet from the international border after it had passed the last alternate road not leading to the border, and appellant was asked his destination.

When appellant replied "Mexico" he was arrested and the camper was thereafter searched. The search disclosed 66 .30 caliber carbine rifles, 240 .30 caliber magazines and 8,245 rounds of .30 caliber ammunition.

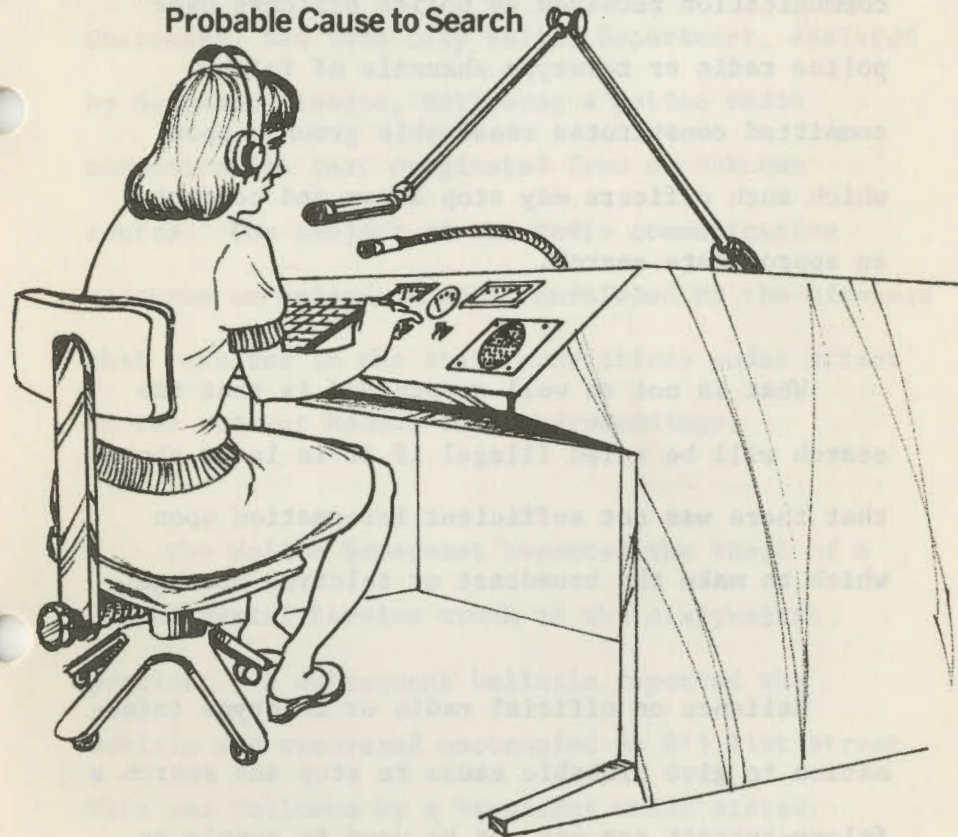
The question presented for review is whether circumstances existed which justified stopping and arresting the appellant and searching the vehicle he was driving without first obtaining a warrant. We conclude that such circumstances did exist.

The Court said further (Concurring opinion at p.932:)

"Assuming that probable cause previously existed, we know of no case or principle that suggests that the right to search (an automobile) on probable cause...under exigent circumstances are foreclosed if a warrant was not obtained at the first practicable moment.

"...the case falls squarely within the 'automobile exception' to the warrant requirement of the Fourth Amendment, first announced in Carroll v. US, 1925, Bg Led 2d 543."

Police Radio Communication --- Probable Cause to Search



POLICE RADIO COMMUNICATION

PROBABLE CAUSE TO SEARCH

It is well established that an official communication received by police officers over police radio or teletype channels of felony committed constitutes reasonable grounds upon which such officers may stop a car and conduct an appropriate search.

What is not so well recognized is that the search will be ruled illegal if it is later shown that there was not sufficient information upon which to make the broadcast or teletype message.

Reliance on official radio or teletype information to give probable cause to stop and search a felony-suspect car may not be used to supply an original lack of facts constituting probable cause.

UNITED STATES V. LAVALLEE
522 F2d 211

The appellant was arrested and taken into custody on January 14, 1967, by Patrolman Edward Obarowski, New York City Police Department, assisted by Sergeant Linanne, following a police radio communication that originated from an unknown source. The subject of the radio communication concerns an episode that is unrelated to the offenses that resulted in the state convictions under attack in the present habeas corpus proceedings.

The police broadcast reported the theft of a United Parcel Service truck in the sixty-sixth precinct. A subsequent bulletin reported the vehicle was recovered unoccupied at 875 71st Street. This was followed by a broadcast which stated: "Perpetrators escaped in 6Z7154 New York, blue, four door vehicle, '66 Plymouth". Shortly after Officer Obarowski heard the bulletin, he observed a blue Plymouth sedan with three male occupants, bearing

the license plate number 6Z7514. The police officer pursued the vehicle and overtook it while it was halted at a traffic light. He ordered the occupants to vacate the vehicle and immediately placed the black operator and his two white passengers under arrest. The appellant had occupied the driver's seat; one D'Ambra and a third person, identified as Walter Johnson, were the passengers. A search of the persons and the vehicle was conducted. The arresting officer probed with his hand the area underneath the driver's seat and found a revolver. Under the seat on the passenger side another weapon was found. Both guns were loaded. The police officer removed the three subjects to the sixty-second precinct station. There, on further search, two keys were found in D'Ambra's pocket. A grey fedora hat and a second hat were found in the vehicle. These items of personal property were received in evidence during the state prosecutions of the appellant Mungo and his co-defendants D'Ambra for the robbery of one Leonard Monteleone, a New York

Telephone Company employee, on January 3, 1967. The guns that were seized were used in the trial of the appellant and D'Ambra on the indictment which charged illegal possession of these weapons.

On January 3, 1967, Monteleone had collected money from pay telephones in a factory located at 1301 Gravesend Neck Road. As Monteleone departed from the factory he was confronted by a Negro and a white person who ordered him into the telephone truck. He was ordered to lie down, his hands bound and the money he had collected was stolen, together with the keys he had used to gain access to the coin boxes. The keys found in D'Ambra's pocket on January 14 were identified at the state trial as the keys taken from Monteleone in the robbery of January third. The two hats taken from the vehicle were placed on Mungo and D'Ambra to aid in Monteleone's identification of the accused. The property seized at the time of the arrest was received in evidence over the appellant's unsuccessful motion to suppress.

Who made the call to the radio dispatcher identifying the suspects and the car was not known. The dispatcher did not obtain information as to the identity of the caller nor information as to how he knew the things he reported.

The Court held the search illegal and ruled that evidence found in the search of the car could not be used at trial, saying:

"While a police radio bulletin may justify immediate investigation, it does not establish probable cause for an arrest and search unless founded on information adequate to support a judicial determination of probable cause. Whitley v. Warden, 28 Led 2d 306.

"That situation prevails here. When the validity of the appellant's arrest was challenged... the prosecution was called upon to establish there was probable cause for the arrest of the appellant."

Since the prosecution could not show that there was probable cause to broadcast the APB, the search was unlawful...and the conviction was reversed.

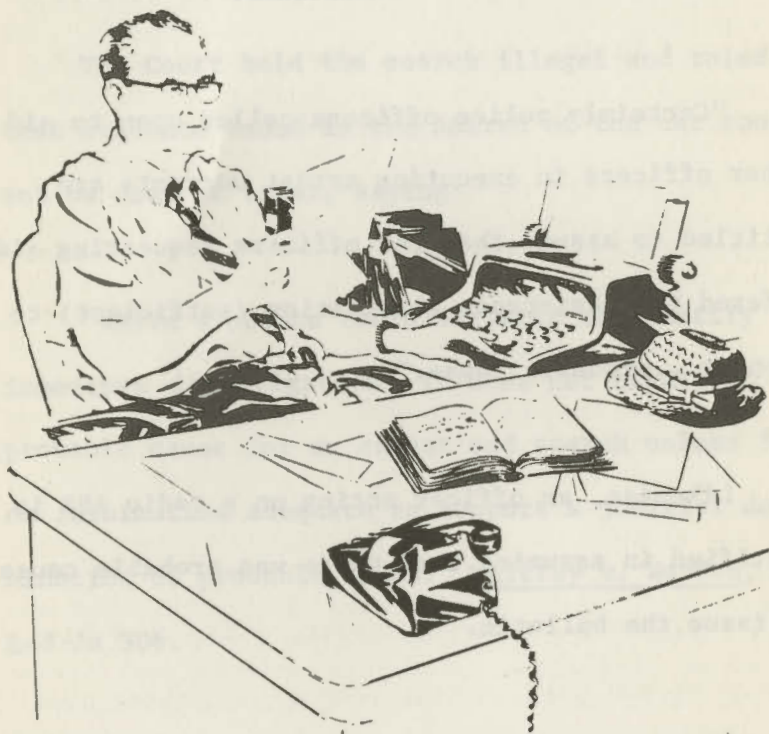
In defense of the officers who made the arrest and search, however, the Court said:

"Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate information (sufficient) to support...probable cause."

Likewise, an officer acting on a radio APB is justified in assuming that there was probable cause to issue the bulletin.

"Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be (justified because the information was carried by official channels)."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 119:

FOREIGN-STATE ARREST WARRANTS

It has become customary in some areas for arrest warrants from other states to be used to pick up fugitives and hold them pending arrival of the foreign-state police.

An arrest warrant issued by a judge of another state may not be executed in South Carolina. It may not be validated by counter-signing in this State by anyone.

When a fugitive from another state is in South Carolina, and foreign-state authorities want him picked up and held, a South Carolina officer must appear before a South Carolina magistrate or recorder and obtain a South Carolina 'fugitive warrant'... authorized by Section 17-201, S.C. Code of Laws.

In felony cases, the fugitive may be lawfully arrested without a warrant, but a 'fugitive warrant' should thereafter be obtained forthwith.

S.C. LAW ON FUGITIVE WARRANTS
SECTION 17-201
S.C. CODE OF LAWS

Any officer in the State authorized by law to issue warrants for the arrest of any person charged with crime shall, on satisfactory information laid before him under the oath of any credible person that any fugitive in the State has committed, out of the State and within any other state, any offense which by the law of the state in which the offense was committed is punishable either capitally or by imprisonment for one year or upwards in any state prison, issue a warrant for such fugitive and commit him to any jail within the State for the space of twenty days, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, agreeable to the act of Congress in that case made and provided. If no demand be made within such time the fugitive shall be liberated, unless sufficient cause be shown to the contrary. Nothing herein contained shall be construed to deprive

any person so arrested of the right to release on bail as in cases of similar character of offenses against the laws of this State.

FRAUDULENT CHECK WARRANTS

FROM A FOREIGN STATE

Foreign-state fraudulent check warrants are no different from other foreign-state arrest warrants. They may not be executed in South Carolina.

A 'fugitive warrant' may not be issued by a South Carolina magistrate unless the crime for which the fugitive is wanted carries a maximum penalty of at least one year in the foreign state. Section 17-201, 1962 Code of Laws of South Carolina. A South Carolina magistrate is justified in demanding a copy of the foreign-state law if there is doubt about the crime charged or the penalty.

South Carolina officers should not permit themselves to be used as 'collecting agents' for out-of-state bad checks. There is no legal authority for them to act as such.

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